

AG Contract No. KR96 2629TRN  
ADOT ECS File No. JPA 96-179  
COS No. 970069  
Project No. TEA-SCT-0(8)P  
TRACS No. S L394 O1C  
Section: Downtown Waterfront Bridge

INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF SCOTTSDALE

THIS AGREEMENT is entered into 23 July, 1997,  
pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended,  
between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF  
TRANSPORTATION (the "State") and the CITY OF SCOTTSDALE, acting by and  
through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-108 and 28-112 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.

3. Congress has authorized appropriations for, but not limited to, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.

4. Such project within the boundary of the City has been selected by the City; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration (FHWA) for its approval.

NO. <u>21736</u>
FILED WITH SECRETARY OF STATE
Date Filed <u>07/23/97</u>
<u>Jose Lee Shell</u> Secretary of State
By <u>Vicky Shannwood</u>

5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

6 The City, in order to obtain federal funds for the construction of the project, is willing to provide the State with the City funds to match federal funds in the ratio required or as finally fixed and determined by FHWA.

7. The work embraced in this agreement and the estimated cost are as follows:  
Construct Concrete Pedestrian Bridge

Estimated Project Cost	\$195,848 00
5% Change Order Contingency	\$ 9,792.40
Estimated Construction Cost	\$205,640.40
Federal Aid Funds @ 94 3%	\$193,918.90
Total City Funds	\$ 11,721 50

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

## II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will proceed to advertise for, receive and open bids, and subject to the concurrence of FHWA and the City, award the contract, enter into a contract with a firm to whom the award is made for the construction of the project, such project to be performed, completed, accepted and paid for in accordance with the requirements of the Standard Specifications for Road and Bridge Construction of the Highways Division, Arizona Department of Transportation. Further, the State will enter into a Project Agreement with FHWA covering the work embraced in said construction contract and will request the maximum federal funds available.

b. Should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in excess of the amount of the City's deposit unless and until so authorized in writing by the City.

2 Prior to the solicitation of bids, the City shall deposit funds with the State in the amount determined by the State to be necessary to match federal funds in the ratio required. Upon completion of the construction contract, the State shall return to the City any part of the funds deposited by the City remaining after City's pro rata share of the cost, as finally fixed and determined by FHWA, has been paid

3 The City shall acquire, without cost to the State, the necessary right-of-way and hereby certifies that all necessary rights-of-way have been acquired.

4 The City shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the

roadway, and hereby certifies that all obstructions and encroachments have been removed therefrom, prior to the start of construction.

5. The City shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use; failing in which the State shall have the right to proceed with the removal or prevention thereof, the cost of such removal or prevention to be borne by the City.

6. Upon completion of construction, the City shall provide for, at its own cost and as an annual item in its budget, proper maintenance, including, but not limited to, signs, and markings necessary for the purpose of regulating, warning and guiding traffic, all in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

7. The City will provide personnel to administer and supervise construction. All construction project change orders are to be copied to the State.

8. The City will complete the project in accordance with approved plans and specifications and the requirements of the relevant State and federal statutes, rules, or regulations. In the event the City fails to comply with the plans, specifications or any relevant State or federal statutes, rules, or regulations, the City shall hold the State harmless from any claims or costs incurred by the State as a result of the City's failure to comply.

### III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. The City assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the City and that the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation and attorneys' fees.

2. The cost of the design, construction and construction engineering work covered by this agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, the City agrees to furnish and provide State with City funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work herein embraced; provided, however, that any provisions in this agreement for maintenance shall be in accordance with Federal requirements.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement shall be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this agreement

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Department of Transportation  
Joint Project Administration  
205 S. 17th Avenue - 616E  
Phoenix, AZ 85007

City of Scottsdale  
City Manager  
7447 E Indian School Rd  
Scottsdale, AZ 85251

9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form

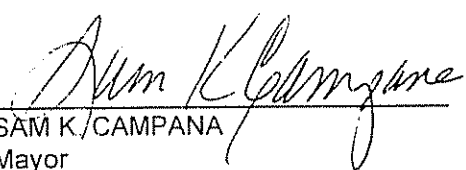
IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written

**CITY OF SCOTTSDALE**

**STATE OF ARIZONA**

Department of Transportation

By

  
SAM K. CAMPANA  
Mayor

By

  
A. WAYNE COLLINS  
Asst. State Engineer

ATTEST:

By

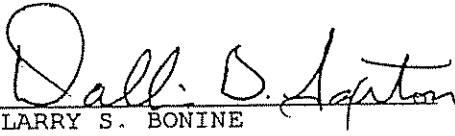
  
SONIA ROBERTSON  
City Clerk

JPA 96-179

RESOLUTION

BE IT RESOLVED on this 3rd day of December 1996, that I, the undersigned LARRY S. BONINE, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Intermodal Transportation Division, enter into an agreement with the City of Scottsdale to construct a concrete pedestrian bridge on the downtown waterfront.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Contract Administrator for approval and execution.

  
for LARRY S. BONINE  
Director

RESOLUTION NO. 4788

A RESOLUTION OF THE COUNCIL OF THE CITY OF  
SCOTTSDALE, MARICOPA COUNTY, ARIZONA,  
APPROVING INTERGOVERNMENTAL AGREEMENT NO.  
970069 WITH THE ARIZONA DEPARTMENT OF  
TRANSPORTATION

WHEREAS, the Waterfront Redevelopment Area was established by the Council in February 1993 to encourage and facilitate rehabilitation of the area through water-oriented redevelopment; and

WHEREAS, important elements of such water-oriented redevelopment are bridge connections over the Arizona Canal; and

WHEREAS, one such planned bridge over the canal has been designed by Paolo Soleri, internationally acclaimed architect; and


WHEREAS, funds for construction of the bridge are available through an Intermodal Surface Transportation Enhancement Act grant, to be administered by the Arizona Department of Transportation; and

WHEREAS, City and ADOT staff have negotiated a proposed Intergovernmental Agreement to provide for contract administration and the shared funding of the construction of the bridge; and

WHEREAS, the Council finds that such agreement would be in the best interests of the citizens.

NOW, THEREFORE, let it be resolved that Council hereby approves and authorizes the execution of proposed Intergovernmental Agreement No. 970069 with the Arizona Department of Transportation.


PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona this 16th day of June, 1997.

  
Sam Kathryn Campana, Mayor

ATTEST:

  
Sonia Robertson, City Clerk

APPROVED AS TO FORM:

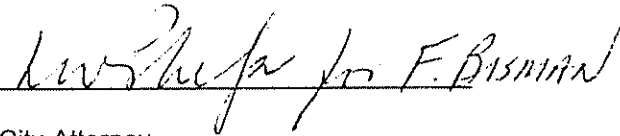
  
Freda J. Bismar, City Attorney

JPA 96-179

APPROVAL OF THE CITY OF SCOTTSDALE ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF SCOTTSDALE and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 12th day of MAY, 1997.

  
City Attorney



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007-2926

GRANT WOODS  
ATTORNEY GENERAL

TRN Main: (602) 542-1680  
Direct: (602) 542-8837  
Fax: (602) 542-3646  
MAIN PHONE : 542-5025  
TELECOPIER : 542-4085

**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR96-<sup>21029</sup>~~2669~~TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED July 17, 1997.

GRANT WOODS  
Attorney General

JAMES R. REDPATH  
Assistant Attorney General  
Transportation Section